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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 95-3
Regulatory Fees for Fiscal Year 1995	)	

COMMENTS

The Montana Broadcasters Association ("MBA"), representing the licensees of 130 Montana broadcast stations, submits herewith its comments regarding the Commission's proposed 1995 regulatory fee schedule for broadcast stations. MBA wishes to focus on the unfair burden placed on small market radio stations. Additionally, MBA seeks clarification of the criterion to be used in determining whether a station is "located" within an Arbitron market.

The Regulatory Fee Should Be Based On The Station's Ability to Pay

The 1994 regulatory fee schedule for commercial radio stations distinguished between AM and FM stations. Within each service, distinctions also were drawn between various classes of stations. For AM stations, stations in each of the four classes A, B, C and D, had a separate fee category. For FM stations, Classes C, C1, C2 and B were lumped in one fee category, while Classes A, B1 and C3 were lumped in another. No distinction was drawn, however, on the basis of the size of the market in which the station was located. Thus, a Class B station in New York City paid the same regulatory fee as a Class C station in Red Lodge, Montana (1990 population 1,958).

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In its Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding, released January 12, 1995, the Commission recognized that "the population density of a station's geographic location was also a public interest factor warranting recognition in the fee schedule." NPRM at ¶29. But in formulating its proposed 1995 fee schedule, the Commission has not yet sufficiently acknowledged that a station's ability to pay should be the guiding principle in establishing the regulatory fee structure. Within each technical facility grouping, the Commission tentatively has decided only to distinguish between stations located in Arbitron metro survey areas and those located outside any Arbitron metro. No distinction is drawn on the basis of the size of the market in question or, more importantly, station revenue. Thus, a successful Class B FM station in New York City (Arbitron Market 1, with a population of 14,330,500) pays the same regulatory fee as a struggling Class C1 station in Great Falls, Montana (Arbitron Market 256, with a population of 67,300). To lump such stations together is simply unfair.

To highlight the disparity between large and small markets, compare the average population per station in Billings, Montana (Arbitron Market 240) with the population per station in New York (Arbitron Market 1): 7,622 versus 299,521, a ratio of 1:39.2. Duncan's Radio Market Guide (1994 ed.) (hereinafter "Duncan 1994"). The difference in estimated revenue per share point is also illustrative: $51,282 in Billings versus $3,931,767 in New York, a ratio of 1:76.7. Id.

Using data from Duncan 1994 regarding market-by-market revenue, it can be calculated that of the $8.911 billion in total 1993 spot radio revenue for the nation, $2.088 billion, or 24.4%, came from the top ten markets. Another $1.087 billion, or 12.2%, came from Markets 11-25.[1] Thus, Markets 1-25 accounted for 36.6% of all spot radio revenue in 1993. Yet stations in those markets would pay the same regulatory fee as stations in the same technical facility grouping located in Markets 236-261. Clearly, there is a need to distinguish between stations on the basis of their ability to pay.

MBA urges the Commission to adopt a regulatory fee structure based on each station's annual gross spot revenue. Such a system would much more precisely reflect the ability of each station to pay its fair share of the Commission's regulatory costs. Using the Duncan 1994 estimate for 1993 of $8.911 billion in total spot revenue, a regulatory fee of .077% of station revenue would produce approximately the same aggregate fees from radio stations as the Commission's currently proposed methods. Use of such a methodology would simplify the fee schedule. No need would exist to maintain technical facility or market-size classifications. The same rate would be applicable to each station, regardless of its technical facilities or location. Such a system would much more equitably distribute the burden of the Commission's regulatory fees.[2]

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[1] These figures were derived by taking market-by-market revenue estimates for 1993 as published in Duncan 1994 at pp. 4-6. The estimate for the aggregate radio spot revenue for the entire nation also was taken from Duncan 1994. Id., p. 1. The Duncan 1994 figures were applied to the Arbitron Metro Service Area Ranking as appearing in the Broadcasting & Cable Yearbook 1994, at p. B-598. That ranking was used by the Commission in formulating its fees proposal for 1995. See NPRM at ¶29 n. 13. Duncan 1994 does not include separate revenue figures for Anaheim-Santa Ana, CA (Orange County), Arbitron Market 16. Accordingly, the aggregate figure for Markets 11-25 does not include any revenue from Market 16. (Duncan 1994, however, notes in its discussion of the Los Angeles market, that an additional $10-12 million in revenue goes to Orange County stations.)

[2] Although these comments focus upon the regulatory fees payable by radio stations, the proposed methodology also could be used to more equitably allocate the burden of the Commission's regulatory fees among the nation's television stations.

MBA proposes that the licensee of each station would certify what the station's gross revenues were for the previous tax year. Those certifications and the fee payment forms would be withheld from public disclosure pursuant to Exception 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4). See generally 47 C.F.R. §0.457(d).

At a Minimum, the Commission Should Not Lump All Arbitron Market Stations Together

If the Commission declines to adopt this year the methodology described above, at a minimum, further distinctions between markets of various sizes should be drawn. As an alternative, MBA urges that a market classification structure similar to that used for commercial television stations be adopted. Specifically, within each technical facility grouping, different fee categories should be established for radio stations in Markets 1-10, Markets 11-25, Markets 26-50, Markets 51-100 and the remaining Arbitron markets.[3] The residual fee category for non-Arbitron markets should be retained (although, as discussed below, the fee should be further reduced).[4] In determining the fees for the various market classifications, the same ratios used to establish the commercial television fee structure should be applied. Specifically, the ratio between the regulatory fee paid by a station located in an Arbitron market ranked 101 or below and a station within the same technical facility grouping but in a larger market should be as follows:

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[3] Although MBA's comments make reference to use of Arbitron's market rankings, as proposed at ¶29 n.13 of the NPRM, MBA urges the Commission to rely on a market-ranking system more directly tied to market-area population, such as the rankings published by the M Street Radio Directory. As discussed below, in small markets whether a market is an "Arbitron market" or not may be a function of whether one or more stations there subscribe to Arbitron's services.

[4] If the Commission determines that the creation of that many fee classifications is unwieldy, which MBA does not believe is the case, at a minimum, the Commission should divide the Arbitron markets into three fee categories: Markets 1-50, Markets 51-100 and Markets 101 and smaller.

1:3.6 for Markets 1-10
1:3.2 for Markets 11-25
1:2.4 for Markets 26-50
1:1.6 for Markets 51-100

With the use of such ratios, the fee structure would more fairly reflect the population density of a station's geographic location, which the Commission has already acknowledged as a public interest factor warranting recognition in the fee schedule.[5]

The Presently Proposed Fee Schedule Places
Too Much of the Burden On Small Market Stations

Under the present proposal, the regulatory fee burden placed on FM stations in the smallest markets (e.g., non-Arbitron market stations) is disproportionate to their economic power and ability to pay. In Exhibit E, n. 33, of the NPRM, the Commission states that in non-Arbitron markets there are 852 Class C, C1, C2 and B FM stations and 1,652 Class A, B1 and C3 FM stations. At the presently proposed rates, those non-Arbitron FM stations will produce aggregate fees of $1,100,800,[6] which is 24.2% of the $4,553,865 in regulatory fees to be collected from all FM stations. The stations in the smallest markets, with the smallest potential audiences and revenues, should not have to pay nearly a quarter of the aggregate regulatory fees for all FM stations.

MBA urges that, if its proposed gross revenue methodology is not adopted, the fee for FM stations in small market stations be further reduced by approximately one-third -- i.e., to $375 for

[5] If the Commission were to only adopt three fee classifications with respect to Arbitron markets, using the methodology described in Appendix E of the NPRM, the ratio between the same class of station located in an Arbitron Market 101 or smaller would be as follows: 1:3.1 for Markets 1-50 and 1:1.6 for Markets 51-100.

[6] (852 x $565) + (1,652 x $375) = $1,100,800.

Classes C, C1, C2 and B and $250 for Classes A, B1 and C3 -- $250. At these rates, the aggregate fees paid by FM stations in non-Arbitron markets would be $732,500[7] or 16.1% of the aggregate regulatory fees to be paid by all FM stations. That percentage is more appropriate considering the wherewithal of these stations in the nation's smallest markets.[8]

Arbitron's Market Ranking Should Not Be Adopted

As mentioned in n. 3 above, whether a particular small market is an "Arbitron market" frequently is dependent not on the population, but upon whether one or more licensees in that market subscribe to Arbitron's services. See Comments of Sierra Cascade Communications, Inc., filed in this proceeding on February 3, 1995. Many Arbitron markets are actually smaller than various non-Arbitron markets. For example, the Benton Harbor, Michigan market is not an Arbitron market, even though its metro population (139,900[9]) is larger than that of Arbitron Markets 201 to 261.[10] For another example, non-Arbitron market Idaho Falls, Idaho, with a

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[7] (852 x $375) + (1,652 x $250) = $732,500.

[8] The NPRM did not include sufficient information to assess the impact of a downward adjustment of the fees to be paid by AM stations in non-Arbitron markets. Maintaining the proposed ratios between FM fees and AM fees, and rounding to the nearest $5, the following fee structure for non-Arbitron market AM stations would result:

Class	A	$375
Class	B	$265
Class	C	$ 85
Class	D	$105

[9] Persons 12+. See M Street Radio Directory (1995 ed.), p. 648.

[10] Arbitron Market 201, Marion-Carbondale, Illinois, has a metro population of 135,800 (persons 12+). See Broadcasting and Cable Yearbook 1994, p. B-599.

population of 114,900,[11] is larger than either of the two Arbitron markets in Montana (Billings--Arbitron Market 240 with metro population of 95,500; Great Falls--Arbitron Metro 256 with a metro population of 67,300). Because of these disparities, MBA urges that a market-ranking list more directly tied to metro population, such as that published in the M Street Radio Directory, be adopted. Furthermore, MBA urges that all stations in markets with metro populations of 150,000 or less be subject to the small market fee schedule proposed herein at pp. 5-6. Alternatively, if the Commission chooses to adopt Arbitron's rankings, the revised fee schedule for non-Arbitron markets proposed herein should also be applied to stations in Arbitron Markets 201 and smaller.

The Term "Location" Must Be Further Defined

In ¶29 of the NPRM, the Commission sets forth its proposal to differentiate stations "located" in Arbitron radio markets from those not located in such markets. The Commission, however, did not indicate the standard to be used in determining where a particular station is "located." A station could be deemed "located" at either its transmitter site or, alternatively, its community of license. MBA urges since a station's transmitter location dictates the geographic area in which the station will compete, the transmitter location should be determinative. If that demarcation results in the unfair classification of a particular station, its licensee may appropriately seek a waiver based on its particular circumstances.

In summary, MBA urges the Commission to rework its fee schedule to base each station's fee upon its gross revenue. If the Commission is not willing to take that step, it should (a) adopt for radio market-size fee classifications matching those used for television stations, (b) cut by one-

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[11] Persons 12+. See M Street Radio Directory at p. 635.

third the fees proposed in the NPRM for small market stations, (c) adopt a market ranking list tied more directly to population, and (d) assess the lowest fee within each technical facility grouping on stations located in markets with metro populations of 150,000 or less. Finally, MBA urges the Commission to rule that for regulatory fee purposes, a station is "located" at its transmitter site.

MONTANA BROADCASTERS ASSOCIATION

By____________________________
William R. Reier, Chairman
Regulatory Fees Committee

February 13, 1995